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16
17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20
21 OAKLAND DIVISION

22 UNITED STATES OF AMERICA,

23 Plaintiff,

24 v.

25 RICHARD THOMAS GRANT,

26 Defendant.

27 Case No. 4:14-cr-00590-PJH

28 UNITED STATES' NOTICE OF
PURSUANT TO RULE 803(10)(B) OF
INTENT TO OFFER INTO EVIDENCE
CERTIFICATIONS OF ABSENCE OF
PUBLIC RECORDS

29
30 The United States of America, by and through undersigned counsel, hereby provides notice of its
31 intent to offer evidence pursuant to Federal Rules of Evidence 803(10) and 902(1). Specifically, the
32 Government intends to offer into evidence Certifications of Lack of Record obtained from the California
33 Franchise Tax Board. The Government asserts that such records are self-authenticating and fall within
34 an exception to the hearsay rule.

35 Rule 902 provides that certain evidence is self-authenticating, and thus does not require any
36 extrinsic evidence of authenticity to be admitted. Rule 902(1) applies to domestic public documents that

1 are signed and sealed, and provides that a document bearing a seal purporting to be that of the United
2 States, any state, or a department or agency thereof, and a signature purporting to be an execution or
3 attestation is self-authenticating.

4 Rule 803 provides a number of exceptions to the general prohibition against the admission of
5 hearsay. Rule 803(10) relates to testimony regarding the absence of a public record. Specifically, Rule
6 803(10) states that the following is not excluded by the rule against hearsay: "Testimony – or a
7 certification under Rule 902 – that a diligent search failed to disclose a public record or statement if: (A)
8 the testimony or certification is admitted to prove that (i) the record or statement does not exist. . ." Fed.
9 Rule Evid. 803(10).

10 Rule 803(10)(B) requires the Government to provide notice to a defendant when the Government
11 intends to introduce a certification at least 14 days before trial. Rule 803(10)(B) was amended as of
12 December 1, 2013, to include this notice provision following the United States Supreme Court's
13 decision in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). See Fed. Rule Evid. 803, Advisory
14 Committee Notes, 2013 Amendments. In *Melendez-Diaz*, the Supreme Court stated that a testimonial
15 certificate could be admitted, without violating the Confrontation Clause, if the accused is given advance
16 notice and does not timely demand the presence of the official who prepared the certificate. *Melendez-*
17 *Diaz*, 557 U.S. at 326-327.

18 Trial in this matter is scheduled to begin on June 6, 2016. In accordance with Rule 803(10)(B),
19 the Government hereby gives written notice of its intent to offer at trial the following certifications of an
20 absence of a public record to prove that the record or statement does not exist:

21 1. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
22 Richard Grant for 2000;

23 2. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
24 Richard Grant for 2001;

25 3. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
26 Richard Grant for 2002;

27 4. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
28 Richard Grant for 2003;

- 1 5. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 2 Richard Grant for 2004;
- 3 6. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 4 Richard Grant for 2005;
- 5 7. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 6 Richard Grant for 2006;
- 7 8. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 8 Richard Grant for 2007;
- 9 9. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 10 Richard Grant for 2008;
- 11 10. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 12 Richard Grant for 2009;
- 13 11. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 14 Richard Grant for 2010;
- 15 12. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 16 Richard Grant for 2011;
- 17 13. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 18 Richard Grant for 2012;
- 19 14. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 20 Richard Grant for 2013;
- 21 15. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 22 Richard Grant for 2014;
- 23 16. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 24 Richard Grant for 2015;
- 25 17. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 26 for Grant Engineering & Manufacturing, Inc. for 2002;
- 27 18. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 28 for Grant Engineering & Manufacturing, Inc. for 2003;

- 1 19. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 2 for Grant Engineering & Manufacturing, Inc. for 2004;
- 3 20. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 4 for Grant Engineering & Manufacturing, Inc. for 2005;
- 5 21. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 6 for Grant Engineering & Manufacturing, Inc. for 2006;
- 7 22. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 8 for Grant Engineering & Manufacturing, Inc. for 2007;
- 9 23. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 10 for Grant Engineering & Manufacturing, Inc. for 2008;
- 11 24. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 12 for Grant Engineering & Manufacturing, Inc. for 2009; and
- 13 25. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 14 for Grant Engineering & Manufacturing, Inc. for 2010.

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16 The Government has provided copies of these certifications to Defendant in discovery, at *Bates*-
17 numbers US17618-643. In addition, the original certifications are available to Defendant for
18 inspection.

19 Respectfully submitted this 20th day of May, 2016.

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21 United States Attorney

22 /s/ Colin Sampson
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24 Trial Attorney, Tax Division
25 COLIN SAMPSON
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